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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,055	04/16/2004	Jeffrey Rehkemper	4004013.0097	7232
34755 7590 01/30/2007 ADAM K. SACHAROFF MUCH SHELIST FREED DENENBERG AMENT&RUBENSTEIN,PC 191 N. WACKER DRIVE SUITE 1800 CHICAGO, IL 60606-1615			EXAMINER PINHEIRO, JASON PAUL	
			ART UNIT 3709	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			01/30/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/825,055

Applicant(s)

REHKEMPER ET AL.

Examiner

Jason Pinheiro

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3709

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION*****Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "game board 100", "openings 106", "speaker 110", "control button array 114", "retaining plate 119", "microprocessor 120", "various gears 128", "gear box 132", "battery pack 136", and "battery door 138" in Fig. 1. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the

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applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The use of the trademark "Simon" (Pg. 1, Para. [03], Line 2) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Objections***

4. Claim 9 is objected to because of the following informalities:

Regarding claim 9, Line 12: "a participant" should be changed to --the participant--

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "acutable" in line 9 renders claim 1 indefinite, as it is not a known word in the English dictionary and it is not known what this term is referring to in this claim.

Therefore for examination purposes it will be assumed that the term "acutable" should be replaced with the term --executable--.

7. Claim 1 recites the limitations "said sequence of signals" in line 10, "the participant's response" in line 13, and "the correctness of the participant's response" in line 14. There is insufficient antecedent basis for these limitations in the claim.

8. Claim 3 recites the limitations "said participant's response " in line 2, "the number of events" in line 3, and "said increased number of sequence of events" in line 4. There is insufficient antecedent basis for these limitations in the claim.

9. Claim 4 recites the limitation " said participant's response " in line 2. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 9 recites the limitation " the correctness of said participant's response " in line 18. There is insufficient antecedent basis for this limitation in the claim.

11. Claim 11 recites the limitations " the number of events" in line 2, and "said increased sequence of events" in line 3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morrison et al (US 4207087) in view of Betker et al (US 5279672).

Regarding claim 1: Morrison '087 does disclose a sequencing game (Col. 1, Lines 45-55); a housing (Col. 2, Lines 36-39); a microprocessor disposed within said housing (Col. 4, Lines 30-35) (Fig. 2); a plurality of manually operable controls affixed to said housing and in communication with said microprocessor, each control, of the plurality of manually operable controls (Col. 4, Lines 30-35) (Fig. 1 & Fig. 2); the microprocessor including means for generating and sensorially rendering a sequence of events, wherein each event in the sequence of events is related to one control of the plurality of manually operable controls (Col. 2, Line 63 – Col 3 Line 6); each manually operable control of said plurality of manually operable controls is actuable externally from said housing by a participant for responding to said sequence of signals (Col. 2, Line 63 – Col 3 Line 6); and the

microprocessor including means for comparing the participant's response to said sequence of events for determining the correctness of the participant's response (Col. 3, Lines 38-41). However Morrison does not disclose a mechanical means to move said housing while the sequence of events are being sensorially rendered, said mechanical means controllable by said microprocessor.

Betker does disclose a mechanical means to move said housing (Col. 6, Lines 50-57), said mechanical means controllable by a microprocessor (Col. 7, Lines 14-17).

Therefore it would have been obvious to one skilled in the art at the time the invention was made to integrate to teachings of Betker into the teachings of Morrison in order to further stimulate the player's interest in the game by providing the addition of motor rotated wheels to move the housing of Morrison's game during game play.

Regarding claim 2: Morrison discloses that which is discussed above. Morrison also does not disclose that the mechanical means to move said housing includes a motor mechanism and a plurality of wheels secured to a lower portion defined by said housing and at least one of said plurality of wheels being rotatably controlled by said motor mechanism.

Betker does disclose that the mechanical means to move said housing includes a motor mechanism and a plurality of wheels secured to a lower portion defined by said housing and at least one of said plurality of wheels being rotatably controlled by said motor mechanism (Col. 6, Lines 50-57) (Fig. 1.).

Therefore it would have been obvious to one skilled in the art at the time the invention was made to integrate to teachings of Betker into the teachings of Morrison in order to further stimulate the player's interest in the game by providing the addition of motor rotated wheels to the lower portion of the housing of Morrison's to move the housing during game during game play.

Regarding claim 3: Morrison discloses that which is discussed above. Morrison further discloses means for providing a first indication when said participant's response corresponds to the sensorially rendered sequence of events which includes increasing the number of events in the sequence of events and sensorially rendering said increased number of sequence of events (Col. 3, Lines 6-9).

Regarding claim 4: Morrison discloses that which is discussed above. Morrison further discloses means for providing a second indication when said participant's response does not correspond to the sensorially rendered sequence of events which includes generating a sensorially error event (Col. 3, Lines 9-11).



Regarding claim 5: Morrison discloses that which is discussed above. Morrison further discloses generating a plurality of distinct visually perceptible light indications (Col. 2, Lines 63-67).

Regarding claim 6: Morrison discloses that which is discussed above. Morrison further discloses generating a plurality of distinct aurally perceptible tones (Col. 2, Lines 63-65).

Regarding claim 7: Morrison discloses that which is discussed above. Morrison further discloses a plurality of push buttons (Col. 2, Lines 36-39).

Regarding claim 8: Morrison discloses that which is discussed above. Morrison also does not disclose that the mechanical means is controlled to move said housing while the participant is making a response.

Betker does disclose that the mechanical means is controlled to move said housing (Col. 6, Lines 50-57).

Therefore it would have been obvious to one skilled in the art at the time the invention was made to integrate to teachings of Betker into the teachings of Morrison in order to further stimulate the player's interest in the game by allowing the housing of Morrison to be moving, by way of Betker's teaching, while the participant is responding.

Regarding claim 9: Morrison '087 discloses a sequencing game having a housing unit (Col 2, Lines 36-39) (Fig. 9) and a

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microprocessor disposed within said housing (Col.4, Lines 30-35) (Fig. 2); a plurality of different colored push buttons affixed to said housing and in communication with said microprocessor (Col.4, Lines 30-35) (Fig. 1) (Although Morrison '087 does not disclose different colored push buttons, it is admitted in the application that Morrison's patent (US 4207087) corresponds to the known pattern matching game "Simon" that is manufactured by Milton Bradley, which is well known in the art to have multicolored push buttons), each push button of said plurality of push buttons is operable by a participant from outside said housing (Col. 2, Line 67 - Col. 3, Line 3) and includes a light emitting source affixed to the housing under said push button (Col. 2, Lines 42-47), each light emitting source is also controllable by said microprocessor to illuminate said push button (Col. 2, Lines 63-67); means for generating a sequence of events and rendering said sequence of events by operating said lights under said plurality of push buttons means within said microprocessor for storing said sequence of events, wherein each event of the sequence of events corresponds to one of the push buttons, of the plurality of push buttons (Col. 4, Lines 29-53); each push button of said plurality of push button when operated by a participant in response to said sequence of events sends a signal specific to said push button to said microprocessor (Col. 5, Line s3-20); and means within said microprocessor for comparing

participant's response to said rendered sequence of events for determining the correctness of said participant's response (Col. 3, Lines 33-41 ). However Morrison does not disclose a motor controlled by said microprocessor to move said housing while said sequence of events are being rendered and during participant's response.

Betker '672 does disclose a motor controlled by said microprocessor to move said housing (Col. 6, Lines 50-57).

Therefore it would have been obvious to one skilled in the art at the time the invention was made to integrate to teachings of Betker into the teachings of Morrison in order to further stimulate the player's interest in the game by allowing the housing of Morrison to be moving, by way of Betker's teaching, while the participant is responding.

Regarding claim 10: Morrison discloses that which is discussed above. Morrison also does not disclose a plurality of wheels, at least two of said wheels being operable by the motor in opposite directions to each other, such that the housing rotates at a predetermined rate of rotation in a predetermined direction.

Betker does disclose a plurality of wheels, at least two of said wheels being operable by the motor in opposite directions to each other, such that the housing rotates at a predetermined rate of rotation in a predetermined direction (Col. 7, Lines 6-10).

Therefore it would have been obvious to one skilled in the art at the time the invention was made to integrate to teachings of Betker into the teachings of Morrison in order to further stimulate the player's interest in the game by allowing the housing of Morrison to move by way of Betker's teaching, at a predetermined speed and direction.

Regarding claim 11: Morrison discloses that which is discussed above. Morrison further discloses a means within said microprocessor for increasing the number of events in said sequence of events and rendering said increased sequence of events only when the participant's response corresponds to the sequence of events lasted rendered by said microprocessor (Col. 3, Lines 3-10).

Regarding claim 12: Morrison discloses that which is discussed above. Morrison further discloses means within said microprocessor for generating an error signal when said participant's response does not correspond to the sequence of events lasted rendered by said microprocessor (Col. 3, Lines 37-41).

Regarding claim 13: Morrison discloses that which is discussed above. Morrison further discloses a means within said microprocessor for generating an error signal when participant's

response is not made within a predetermined time (Col. 3, Lines 50-55).

Regarding claim 14: Morrison discloses that which is discussed above. Morrison further discloses increasing the speed of the game as the game progresses (Col. 1, Line 67 – Col. 2 Line 2). Morrison also does not disclose means within said microprocessor for increasing a rate of rotation of said housing when the participant's response corresponds to the sequence of events lasted rendered by said microprocessor.

Betker does disclose means within said microprocessor for increasing a rate of rotation of said housing (Col. 7, Lines 6-10).

Therefore it would have been obvious to one skilled in the art at the time the invention was made to integrate to teachings of Betker into the teachings of Morrison in order to further stimulate the player's interest in the game by allowing the housing of Morrison to increase in speed of rotation, by way of Betker's teaching, as the game progresses, which is as the player's response corresponds to the sequence previously rendered by the game device.

Regarding claim 15: Morrison discloses that which is discussed above. Morrison also does not disclose a means within said microprocessor for changing the predetermined direction of the rotating of the housing.

Betker does disclose a means within said microprocessor for changing the predetermined direction of the rotating of the housing (Col. 7, Lines 34-40).

Therefore it would have been obvious to one skilled in the art at the time the invention was made to integrate to teachings of Betker into the teachings of Morrison in order to further stimulate the player's interest in the game by allowing the housing of Morrison to move in a direction different than that of the predetermined direction, as disclosed in Betker's teaching.

Regarding claim 16: Morrison discloses that which is discussed above. Morrison further discloses a speaker affixed to the housing and controlled by the microprocessor such that the microprocessor emits a plurality of distinct aurally perceptible tones, each tone of said plurality of distinct aurally perceptible tones corresponds to a push button (Col. 1, Lines 46-55).

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lam '513 discloses an electronic matching game, Kulesza '156 discloses a rotating game device, Sokol '604 discloses a rotating display apparatus, Keifer '872 discloses a rotating memory game, Kowalewski '303 discloses a rotating display system.

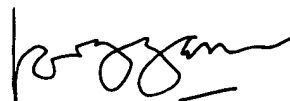
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Pinheiro whose telephone number is 571-270-1350. The examiner can normally be reached on M - F 8:00 AM - 4 PM;.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jong-Suk (James) Lee can be reached on 571-272-7044. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JP  
01/24/2007

  
**KIM NGUYEN**  
**PRIMARY EXAMINER**